

State of Arizona  
Child Support Guidelines Review Committee

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Timothy Frank  
5005 W Escuda Dr  
Glendale, AZ 85308  
Tel No 623-695-0986

Proposed 2011 Guidelines  
COBS – An Unreasonable Use of State Power against Wage Earning Parents

Honorable Membership:

The committee defines a “well-being minimum” for a child, claimed to be a single parent with one child living at 170% of the Federal poverty level as defined by annual cash income.  
(Reference 1)

Let me assert the first presumption of the State. The State presumes a responsibility toward ensuring the “well-being” of the child of a never married or a divorced couple.

The State attempts to ensure the well-being of the child by ordering a reallocation of the parental cash incomes in such a way that the higher income parent yields a cash benefit to the lower income parent. The State uses its coercive power to enforce that allocation.

Let me assert the second presumption of the State. The State presumes that its reallocation of the parental cash incomes will produce the desired “well-being” of the child.

In detail, it is the methodology used to justify the reallocation of parental incomes, the lack of reasonable limits on that reallocation, and the presumption of that reallocation, to which I most strongly object.

The committee documentation suggests that in the majority of child support cases, from low income through middle income and higher, little material financial adjustment will occur. One could reason this to be so, based upon the absolute amounts. Let us assume this to be true for the purpose of this paper. (Footnote 1)

For the purpose of this paper, let us also presume that a person of reason can accept a target Standard of Living of 170% percent of the poverty level. (Reference 2)

Under COBS, a most remarkable new result appears in the cases where there is a low-to-middle income parent coupled with a middle-to-high income parent. That new result shows a significant

increase in the reallocation of parental income, from the higher earning parent to the lower earning parent. Other advocates have demonstrated that for practical purposes such a reallocation does materially equalize the Standard of Living of the two parental households.

Amazingly, that reallocation not only ensures the achievement of the 170% well-being minimum, it causes a cash transfer that far exceeds the goal. (Reference 3)

I object to the recommendation that any parent in such a situation should be required to fund the other parent's household to such a level --- for any case, at any time, whether divorced or never married. A person of reason could claim that after the well-being minimum is met the State should have no further responsibility of managing the parental income allocation.

I claim that the divorced status or never married status of a couple does not qualify the State to exercise such significant coercive power over the income of a private individual; that upon ensuring the interest of the State toward the well-being of the child, that further State intervention should cease.

Such an argument is the foundation for my claim that upon reaching the well-being minimum, the committee should significantly level – *to nearly a zero increase with increasing income* – the increases in further support payment cash value as parental income rises further.

I restate my assertion that upon reaching the well-being minimum, the *Earned Priority Principle* should take precedence. A further increase in support payment cash value is not justified.

I credit Professor Ellman for proposing to the committee membership a method for recognizing my claim, cited in the previous paragraph. The committee, however, has rejected my claim. Productive debate on this item has not occurred. The method proposed is weak. (Reference 9) The method injected into the proposed 2011 guidelines further imposes no legal requirement on the court. (Reference 10)

At this point, let me state that I'm sure each member of the committee is aware of the perception yielded by this amazing increase in cash payments from the high or middle income parent to the middle to low income parent. It need not be further embellished here. I have included it, however, for the record, as an attachment. (Footnote 3)

I look forward to the future. I wish to see an open debate on this specific matter in future deliberations regarding the child support schedule for our State. Until that debate occurs, and parents subjected to the concept are heard, the COBS of today is unacceptable.

Yours truly,

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T. T. Frank

## Footnotes

Footnote 1) Child support orders qualified for modification hearings are substantial; my preliminary estimates show that 72% of child support cases will qualify. However, the committee is accurate in its assessment that the absolute dollar amounts are relatively small. Thus, a person can reason that it is accurate to state that COBS will have little effect on the majority of child support orders.

Footnote 2) Other advocates have produced charts that quantify how large this cash payment becomes. (Reference 3) Public comment provided at the June 4, 2010 meeting of the *Guidelines Review Committee* recognizes the impact. (References 4, 5) Member comment at the December 16, 2009 meeting of the *Arizona Judicial Council* also recognizes the impact. (Reference 6) The response of the committee to implement a “phase in” period further recognizes the impact. (References 7, 8)

Footnote 3) The committee has not provided valid research demonstrating that significant cash payments beyond the well-being minimum improve the well-being of the child. Certain members have commented that “Child support payments in Arizona are too low.” The committee has not provided valid research supporting that statement or the context of that statement. Such actions without a research basis yield the perception that the COBS of today is an extension of the social concept that someone else should bear the consequence of the action of an individual under the law. The act of divorce with child or the act of bearing an out-of-wedlock child instead perceptibly qualifies the custodial parent for a large cash assistance payment from a higher wage non-custodial parent. Further, the State appears to presume that the higher income non-custodial parent should be subject to State power – the taking of their income under threat of punishment – that they are not responsible and should not be responsible for spending their cash on their self, their household, or their child – and that the custodial parent has a higher “right” to do so. I can perceive, then, that COBS as we know it today represents a new cash benefit program to the custodial parent of such higher earning couples – and that the prime directive of COBS appears be the enabling of a large transfer of financial resources from the wage earning parent – of middle-to-upper income status – to the other parent – of lower-to-middle income status.

## References

Reference 1) Ira Mark Ellman, Sanford Braver, Robert J. MacCoun, *Intuitive Lawmaking: The Example of Child Support*, In Press, Journal of Empirical Legal Studies, Volume 6, No. 1 (2009).

Reference 2) *Final Report And Recommendations of the Child Support Guidelines Review Committee*, March 25, 2010, p. 16, ***Minimally Adequate Income***.

Reference 3) Wasson, Kevin, *Income Shares Model versus COBS Model*, July 30, 2010 (sheets 5, 10, 15, 20, 25, 30, 35, 40, 45, 50 –equal parenting time). Attached.

Reference 4) Seldon, Rena, *Public Comment – Guidelines Review Committee*, June 4, 2010, pp. 4, 5. Attached.

Reference 5) Frank, Timothy, *Public Comment – Guidelines Review Committee*, June 4, 2010, p. 4. Attached.

Reference 6) Chief Justice Hurwitz, *Member Comment – Arizona Judicial Council Meeting Minutes*, December 16, 2009. Attached.

Reference 7) *Final Report and Recommendations of the Child Support Guidelines Review Committee*, March 25, 2010, p. 10.

Reference 8) *Draft Arizona Child Support Guidelines*, Section V, paragraph D, March 25, 2010.

Reference 9) *CSGRC Meeting Information, Report from Spreadsheet Study Workgroup-High Disparity and High Income Cases*, Item 6, June 4, 2010; cover sheet, p. 2.

Reference 10) *Arizona Child Support Guidelines 1011*, Section II, paragraph O, June 22, 2010.